

MT LEGISLATIVE HISTORY

Chapter 21 1971

Bill H 85 S _____

Original bill & hist. C

H. Committee on Environment and Resources S. Committee on Public Health, Welfare & Safety

Hearing Date(s) Jan 12 ✓ C

Hearing Date(s) Feb 02 ✓ C

Jan 13 ✓ C

_____ C

Jan 16 ✓ C

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Jan 18 ✓ C

_____ C

Date Out Jan 18 ✓ C

Feb 02 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

January 12, 1971

The Environment and Resources Committee was called to order at 10:40 a.m. with a quorum present and Chairman Lundgren presiding. The meeting was held in Room 431.

Rep. Ainsworth, the author of H.B. 85 was called on to explain the bill. He stressed the need for the revision of the present water pollution control act, desirability of having members of the council who would not have a conflict of interest, discussed the provisions for hearings and the court procedures and gave a history of the present water pollution control legislation. He said that H.B. 85 would coincide with recommendations for executive reorganization. House Bill 85, he said, would provide for quick action in emergencies which the present law did not allow.

Mr. Clayton Brinck, director of the Inorganic Water Pollution Control Council, stated he was appearing in support of H.B. 85. If passed in its present form, he said, it would provide for better enforcement of the water pollution control act. The bill would change the classification of streams not used by more than 100 people for drinking purposes but used for acceptance of industrial discharges, from the classification of industrial use only which he felt would be an improvement over the present classification. He stated that it would comply with present executive reorganization plans of placing the water pollution control under the state board of health.

Mr. Jim Posewitz, representing the Montana Fish and Game Department, appeared in support of H.B. 85 at the request of Rep. Ainsworth. He stated he was also representing the Council of Natural Resources and Development which had been formed to work with Professor Rusoff in drafting the legislation. The sub-committee represented 16 state agencies with interest in natural resources. He stated the council would like to add its support and urge passage of H.B. 85.

Mrs. Dorothy Eck, representing the League of Women Voters, spoke in support of H.B. 85. She stated she didn't believe reorganization was an issue and believed the enactment of H.B. 85 would strengthen enforcement of the water pollution laws and would result in better quality water.

Mrs. Eliz Hurley, representing the Association of American Women, stated they supported the bill and that conservation of our natural resources had been the subject of their study for the year.

Mr. R.J. Hurley, representing Trout Unlimited, said they would like to support H.B. 85. He said Trout Unlimited had been involved in so many post mortems for fish that they would

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appreciate not having to go into the streams to study why the deaths had occurred but to prevent the deaths in the first place. His group was strongly in support of H.B. 85, he stated.

Mr. Don Aldrich, representing the Montana Wildlife Federation, stated his group has been involved for a number of years to obtain better enforcement of the water standards, were very much in support of H.B. 85 and was sure that better quality water will be possible through enactment of H.B. 85.

Mr. Winton Weydemeyer, representing the Montana Conservation Council which was composed of personnel of state and federal agencies dealing with natural resources of Montana, all of the university units, various industrial and professional groups, members of practically all farm, conservation and sportsmen state organizations, had actively participated in drafting and securing passage of the 1955 pollution control act. He stated that H.B. 85 removed the objections the council had to S.B. 305 considered last session and that the council gave H.B. 85 its approval and support. His statement is attached as exhibit 3 and should be considered as part of the minutes.

Chairman Lundgren stated that due to another meeting at 11:30 at which many of the committee members were expected to attend, the hearing would be continued in the afternoon and that the remaining time would be devoted to questions the committee members might wish to ask.

Rep. Darrow asked Mr. Posewitz if the bill in its present draft had been approved by the natural resources and development council and Mr. Posewitz said he believed it is but would like to refer the question to Prof. Rusoff. Prof. Rusoff said the main changes were in definitions of pollution but was just another way of saying the same thing and were relatively technical but he didn't believe there should be anything controversial. He said he had a list of the last group of changes and Rep. Darrow asked that the changes be made available to the committee members.

Mr. Brinck stated one change, use of local sanitarians and local health officers, had been a recommendation of the state comprehensive health planning council.

Professor Rusoff was called upon to give the legal procedures in H.B. 85.

Rep. McNamer asked if the state of Montana has the right to include all the waters of the national forests and those in the land owned by federal land agencies. Prof. Rusoff said the federal government takes the attitude that it does not have to comply with the state air pollution laws and that this could be a problem. He said he did not know the ultimate answers. He said the definition of state waters is the same as it is under the present water pollution control laws.

Rep. McGrath stated the small miners association would

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like to appear on the bill and had not received a copy of the bill in time to appear.

Chairman Lundgren stated that all that wanted to appear on the bill would be given time to be heard and that the meeting would continue upon adjournment in the same room and announced a recess at 11:15 a.m.

Respectfully submitted,



Conrad F. Lundgren
Chairman

hw

This is fundamentally the testimony given by Rep. Ainsworth as the author of H.B. 85, given at the hearing before the Committee on Environment and Resources in the morning of Jan. 12, 1971. Hearing was recessed until adjournment.

HOUSE BILL 85

PROPOSED CHANGES IN MONTANA'S WATER POLLUTION LAW

The present water pollution law needs extensive revision. It proved inadequate in 1967, to stop pollution of the Clark Fork River. Its administrative provisions are complex, with responsibilities divided among the Water Pollution Control Council, the Board of Health, and the Department of Health. The Water Pollution Control Council has built-in conflicts of interest. The procedural provisions are confusing and permit long delay. There is no provision for action in emergencies and there are not adequate sanctions.

A new water pollution bill has been drafted in consultation with a committee representing the Water Resources Board, the Department of Health, and the Fish and Game Department. It has been approved by the Council on Natural Resources. That bill, if enacted, will:

1. Simplify the administrative structure.

It will transfer final administrative authority from the Water Pollution Control Council to the Board of Health; the Council will become an advisory body, free to express the views of industries and agencies its members represent, without its present problems of conflict of interest.

2. Make clear that there is a right to a hearing on the denial, suspension, or revocation of a permit.

3. Require fair procedure at hearings, appropriate for the type of question raised.

The bill distinguishes between hearings dealing with the setting of standards and classifying of streams and hearings dealing with specific questions, such as the denial of a permit or an order to cease a particular alleged violation.

4. Avoid unnecessary and undesirable delay.

5. Limit judicial review of an order of the Board of Health to the questions of whether the Board decided questions of fact reasonably on the basis of the evidence in the record made before the Board and whether the Board acted legally.

6. Make clear that an order of the Board of Health may, in appropriate cases, be effective pending review by a district court or an appeal to the supreme court.

7. Add fines to the sanctions available for enforcement.

8. Facilitate action in emergencies.

9. Provide for quicker action by temporary restraining order, temporary injunction, or permanent injunction.

10. Make clear that officials and members of the public have any remedies existing before enactment of the statute.

11. Remove exceptions for long-standing industrial pollution and for seepage from private ponds to state waters.

September 13, 1970.

LKR

Ex 101

AMERICAN ASSOCIATION of UNIVERSITY WOMEN

Montana



Division

The Montana Division of the American Association of University Women supports this measure---to place water pollution control in the Department of Health. HB 85

It is the logical administrative agency to determine such matters, as we need water for life sustenance.

It is really unusual that policy and guidance for such a matter would be in any other agency.

The Board of Health is the agency that can provide an objective approach toward the interest of

public health and safety.

Thank you
Linda Chernisky

Linda Chernisky
AAUW
1504 South 5th
Bozeman, Montana
587-0693

Testimony on H. E. 85

Winton Weydesmeyer
Montana Conservation Council

May the record show that I am Winton Weydesmeyer, legislative representative of the Montana Conservation Council. The Council is a composite state-wide citizens organization, embracing in its membership personnel of nearly all state and federal agencies dealing with the natural resources of Montana; all of our University units; various industrial and professional groups; and members of practically all farm, conservation, and sportsmen's state organizations. We actively participated in drafting and securing passage of the 1955 Pollution Control Act.

The Council concurs in Montana's water policy as declared in Section 89-101.2 of the codes: "The public policy of the state is to promote the conservation, development and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens." But the Council is also concerned with maintaining the quality of our waters and with the prevention and abatement of pollution.

In the light of these objectives we have examined HE 85 to determine whether it harmonizes protection and development. We find that it removes some of the doubts we had about SB 305 considered at the 1969 Session, that it tightens enforcement provisions, clarifies hearing procedures, writes into law the anti-degradation policy adopted by the Pollution Control Council prior to the last session, and that in changing the powers and duties of the Council it conforms to executive reorganization recommendations.

As HE 85 seems to establish a desirable balance between water quality protection and beneficial use which the Conservation Council desires, we extend to it our approval and support.

January 12, 1971

The hearing on H.B. 85 was resumed at 2:45 p.m. before the Committee on Environment and Resources with Chairman Lundgren presiding and a quorum present.

Chairman Lundgren asked if any other proponents of the bill would like to speak, and since there were not any, he asked the opponents to speak on H.B. 85.

Mr. R. Louis Brown, attorney for the Anaconda Copper Mining Co., stated that he wanted it be known that his appearance was not in opposition to the bill. He stated his company was not afraid of any water pollution bill and was dedicated to cleaning up the environment in Montana. He stated the company was in compliance with the federal and state of Montana water standards and it expected to remain in compliance with any laws now in existence or that will be passed in the future, and that it would meet any standards that are adopted in air and water pollution controls. He explained the circumstances of the polluting of Silver Bow creek in 1967. The contract with the several unions had expired and the company and the unions could not come to any agreement. He explained the process of the precipitation plant. In the contract, the union did supply the necessary men to prevent any damage to the company but they would not allow anyone to work to produce copper and the union members believed operation of the precipitation plant did produce copper and would not allow anyone to work in the precipitation plant. Mr. Brown stated that even though the company had done all it possibly could, there was some polluting of the creek at that time. He stated the company had negotiated new contracts that would cover any possibility of a similar experience in the future. Mr. Brown stated that within the next 2 or 3 years the company would not be contributing anything in the receiving streams that is not as clean as the receiving streams. He stated that he thought the following sections of the bill were unreasonable and unfair: page 9, lines 7 through 13; section 13, page 15, line 22; line 26, sub-section 1, 2 and 3; page 15, line 18, sub-section 3; section 15, page 19, line 4; section 16, page 20, line 16; He questioned the use made of confidential records.

Mr. Robert N. Holding, representing the Montana Wood Products Association, stated his association was whole-heartedly supporting the principle of water pollution control and would continue to do so, using all the new technological developments. He thought section 4, page 5, line 18, "as matters of policy" should be deleted. He thought section 5, page 6, line 20 should be altered; section 6, page 9, line 7 was discussed; section 17, page 21, line 8 should have the word "wilful" inserted.

Mr. Mons Tiegen, representing the Montana Stockgrowers Association, stated that Montana probably has the best livestock

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laws of any of the 50 states. He thought a good hand should be given to the present water pollution council for the work they have done in the past. He said he had not had time to review the technical points in the bill. He didn't think the small livestockmen should be regulated by the bill.

Mr. David Smith, representing the Montana Woolgrowers Association, opposed the bill.

Mr. Ben Havdahl, executive director of the Montana Petroleum Association and the Rocky Mountain Oil and Gas Association, stated he thought private ponds and lagoons should be omitted from the bill. At the present time jurisdiction was under the oil and gas commission and he thought there would be duplication of authority. He thought some consideration should be given to the knowledge of the oil and gas procedures with relation to this bill.

Mr. Ray Fischer, representing the Montana State Chamber of Commerce, stated the Chamber was not opposed to water pollution and their reservations concerning H.B. 85 had already been pretty well expressed by former opponents.

Rep. Ainsworth called on Professor Rusoff to explain the legal aspects of H.B. 85 which he did, explaining each section which had been questioned.

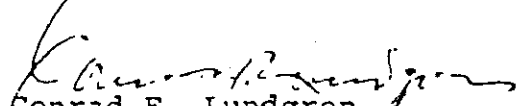
Mr. Brinck explained the discharge of wastes in the production of oil and gas.

Mr. Crippen asked if Mr. Brown could answer some of the questions that came up during Mr. Rusoff's discussion of the bill. Chairman Lundgren stated that Mr. Brown had already been given time to speak on the bill. Witnesses were excused.

Chairman Lundgren set the continuation of the hearing on H.B. 85 at 4:30 p.m., January 13 in Room 431, and possibly the hearing would be continued on January 14. Rep. Ainsworth said he thought everyone that wished should be given the opportunity to speak on the bill to which Chairman Lundgren quickly agreed, and asked if anyone knew of anyone else that wished to appear. Rep. Burnett said he thought the Soil Conservation group wished to appear.

Rep. Johnston moved to adjourn at 4:40 p.m. Meeting adjourned.

Respectfully submitted,


Conrad F. Lundgren
Chairman

hw

THOSE APPEARING IN SUPPORT OF HOUSE BILL 85--January 12, 1971

Don Aldrich, Missoula, representing Mont. Wildlife Federation

C. W. Brinck, Helena, representing State Dept. of Health

Dorothy Eck, Helena, representing League of Women Voters of
Montana

C. R. Fischer, Helena, representing Montana Chamber of Commerce

Mrs. Elizabeth Hurley, representing American Association of
University Women

R. J. Hurley, representing Trout Unlimited

Eva Lochenmoier, representing American Association of
University Women

John H. Morrison, Montana Water Congress

Jim Posewitz, Montana Fish and Game Dept., Council on
Natural Resources and Development

Lester R. Rusoff, Western Montana Fish and Game Association
Montana Wildlife

Winton Weydemeyer, Montana Conservation Council

Art Whitney, Montana Fish and Game Department

D. G. Willems, State Dept. of Health

THOSE APPEARING TO AMEND HOUSE BILL 85

January 12, 1971

Mons Tiegen, representing Montana Stockgrowers Association

David A. Smith, Montana Woolgrowers Association

B. G. Havdahl, Montana Petroleum Association and Rocky
Mountain Oil and Gas Association

Robert N. Holding, Montana Wood Products Association

R. Lewis Brown, The Anaconda Company

Bill No. BG Hardoh 1 HB 85-

Whom do you represent? Mont. Pet. Assoc.
Rocky Mt. Oil & Gas Assoc

Amend?..... Oppose?..... Support?.....

Please leave prepared statement with secretary.

as per statement pertaining to private
poss. now under control of oil & gas
used in normal oil field operations

Conservation Commission

January 13, 1971

The meeting of the Environment and Resources Committee was called to order at 5:00 p.m. with a quorum present and Chairman Lundgren presiding.

Hearing was continued on H.B. 85.

Mr. Peter Antonioli, representing the Montana Mining Association, and as a small mine operator, asked how much authority the water pollution control council would have over the executive director and cited an example of the executive officer paying no attention to the advisory council. He stated he would like to have the bill amended to spell out the authority of the advisory council. He also asked that the bill be amended to increase the membership of the council and that representation from the mineral interests be accepted. He said he did not think the small mine operators should come under the regulations of the bill. Otherwise, he said, the bill was fine and very well written.

Mr. Dean Hanson, chairman of the State Soil Conservation Committee, asked that a representative from the Soil and Water Conservation Service be named as a member of the water pollution control council. His statement is attached as exhibit 1 and becomes a part of the record.

Mr. J. Rooney, representing Trout Unlimited, appeared and showed some black and white pictures to show the members of the committee why regulations on privately owned ponds in the state is necessary. He supported H.B. 85.

Mr. A. G. Slattery, vice-chairman of, and representing the Montana Association of Soil and Water Conservation Districts, asked that the bill be amended to include representation from industry and agriculture on the council and that the director should be responsible to the council in carrying out their advice. In reply to questions by Representatives Ainsworth and Darrow, Mr. Slattery stated that they would like to have it written in the bill that an appointment be made from the Montana Association of Soil and Water Conservation.

Rep. Bradley asked Prof. Rusoff if the bill should include provisions in case new evidence should show up in court proceedings and Prof. Rusoff said this could be inserted if the committee felt it was sufficiently important.

Mr. Don Willem, State Board of Health, was asked if H.B. 85 would regulate the agriculture and livestock industries any more than at present and Mr. Willem stated that he didn't know of any in the bill that would change the present regulations. On the proposed changes on feedlot regulations, agricultural wastes would be included in the existing laws. He stated there were no changes concerning livestock growers.

There being no other opponents that wished to speak, Chairman Lundgren excused the visitors.

January 13, 1971 --2 afternoon

Chairman Lundgren asked if there were any objections to putting the bill in a sub-committee and there being none, he appointed Rep. Scott as chairman, Representatives Johnston and McNamer and asked that they report to the committee as soon as possible.

Chairman Lundgren stated the meeting for H.B. 66 would be held in the Governor's Reception Room at 10:30, January 14; House Bill 33 would probably be postponed until January 19 and that there would be a meeting Saturday morning.

Chairman Lundgren asked the committee members if they would have any objections to allowing one of the legislative interns to sit in on the committee meetings, he would invite them to leave at any time any member of the committee so desired, and they would be under strict orders, as is the secretary, not to discuss the meetings. The members agreed unanimously that the interns be allowed to attend the meetings.

Rep. Quilici stated he hoped the sub-committee would recognize the need for 5,000 miners in Butte to have work and not to make the regulations in H.B. 85 so stringent that the Butte mines could not operate.

Rep. McGrath stated he would not be able to attend the meeting Saturday and hoped they would not vote on the bill on Saturday.

Rep. Scott asked if the sub-committee would work with representatives of different groups to work out some possible amendments and the Chairman agreed.

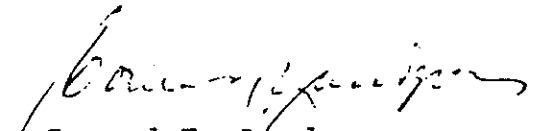
Rep. McGrath stated the water standards in the bill complied with the state water standards. Rep. Darrow stated the water standards and waters reclassifications had been started in 1955 and were revised to meet the standards set by the federal government in July, 1958.

Discussion of possible amendments to H.B. 85 followed and Rep. Scott invited members of the committee to meet with the sub-committee. Rep. Quilici requested that a member or organized labor be appointed to the advisory council on water pollution control. Rep. Ainsworth stated he had no objection to amending the number of members to the council.

Chairman Lundgren stated the meeting on H.B. 66 would be held in the Governor's reception room at 10:30 a.m. Thursday, January 14.

Rep. Scott moved to adjourn. Meeting was adjourned at 5:40 p.m.

Respectfully submitted,


Conrad F. Lundgren
Chairman

hw

As a concerned citizen, agriculturist, and conservationist, I am concerned with sound legislation and its proper perspective.

Agriculture has often been pointed to as a polluter basically because of attempts to improve crop production. However, I should like to point out that today many agronomists and soil conservationists believe, and data is now being collected to show, that maximum crop production results in minimum pollution.

High levels of protection means that soil erosion is stopped; plant nutrients in the form of chemical fertilizers are used to feed the plants growing on the land and not the fish in the streams and rivers; weeds and insects are controlled to a point that pesticides use can be decreased; water runoff is reduced because we need the water for the crop; and crop residues are hopefully not burned or allowed to wash off the land because they are important in stabilizing soil structure and organic matter levels.

In the case of fertilizers used it must be understood that approximately 50% of the total tonnage is chemically active, such as nitrogen, phosphates and potash. By simple calculations you can understand when a bushel of wheat contains approximately 1.8 pounds of nitrogen times our gross state yield, that we are taking out a great deal more than we are putting back to date at least. This ratio is true in respect to the other grains and added nutrients.

The goal of our Soil and Water Conservation Districts in its originality was designed with the common goal of being to stop erosion and to keep the soil in place. They have and are still, actively engaged in this antipollution fight that people in agriculture have been waging for years.

Granted, there are situations in agriculture and the livestock industry that certainly need some corrective measures and limited controls.

We in the Soil and Water Conservation Districts movement feel pretty firmly that proper soil and water conservation is just as important, or more important here in our great State, than possibly some strong antipollution regulations against feed lots, fertilizer use and pesticides use that wouldn't accomplish any material gain even if they were observed 100 percent. However, we will be the first to say that proper direction and educational controls are certainly desirable and to implement such control and procedures to the best interests, we need your type of proposed legislation when it is so written that it can be implemented to fit the needs of agriculture and the rural and urban environments.

Agriculture is not, as many people feel an environmental enemy, and proper use of fertilizers, pesticides and livestock production does not mean that we must damage our soils, waters, and air of Montana.

I would like to ask your consideration relating to Section 69-4310 RCN, 1947 as amended: page 11, of specifically naming representation of Soil and Water Conservation Districts to the advisory council. This I feel is not unrealistic to request, in light of Districts involvement in the areas concerned in this act.

January 13, 1971

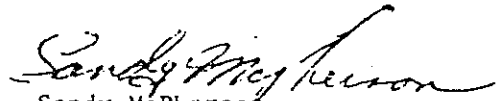
House Environment and Resource Committee
Chairman: Lundgren
Montana Legislature
Helena, Montana

Gentlemen:

At the regular meeting of the Helena Board of Realtors today, January 13, 1971, the "Water Pollution Control Law Change", HB85, was discussed.

By a majority vote we send our recommendation, DO NOT PASS House Bill No. 85.

Sincerely,



Sandy McPherson
President, Helena Board of Realtors

SM/bm



F. H. STOLTZE LAND & LUMBER CO.

Lumber Manufacturers

COLUMBIA FALLS MONTANA

January 13, 1971

The Honorable Con Lundgren
House Office Bldg.
Helena, Montana

Dear Mr. Lundgren:

I am writing to state my opposition to HR 33 and HR 35.

Both of these proposed bills are unneeded and will do nothing for the state of Montana.

Sincerely,

F. H. Stoltze Land & Lbr. Co.

Royce Satterlee
Royce Satterlee,
Gen. Mgr.

RS:dh

The reason I was picked to be here is because I was the first farmer/feeder who was cited with the pollution problem. A year ago I built a conventional feedlot. Before starting construction I went to the Water Resources Commission. I showed them my plans and I asked them out to view the feedlot site. They said "Sure, go ahead. No problems."

So we built our 3,500-head feedlot and after nine months of operation, I had three neighbors half a mile away turn in complaints on grounds of pollution. One was a farmer and two were renters on farm property. They turned in complaints to the effect that I was polluting a dredge ditch which dumps into the Salt River about three miles from my feedlot.

The Water Resources people came out, took samples of my nitrates and chlorides which was at about 110 parts per million. They said they were not supposed to get over 150 ppm.

Then the end of June, 1970, I got a letter to appear for a determination hearing at which I was informed that by August 31, 1970, I was to have my cattle out of the lot, and an engineered pollution control system approved by the Water Resources Commission and construction ready to start.

So between June and August 31, when I moved 3,461 unfinished cattle out of this lot, the Resources Commission changed their mind four times as to the type of pollution practice (control) that I should do. But at the end of August they finally decided that I was to build a detention basin 10' deep - covering 4½ acres - I have a dike 500' long and 66' wide. The cost is approximately \$30,000. I must irrigate with the water out of this lot. Fortunately I have a 55-acre cornfield adjacent to it. But I had to put in a complete irrigation system.

The capacity of this lake was planned to take the average rainfall of 27 years plus five extra inches. This figures to be 3,886,000 gallons of water that would run off my lot. But my detention basin that I had to build, had to hold 10 million gallons of water! And I have to pump it dry between the months of June and September each summer!

I have done everything to the letter they have recommended but when I get this all done and completed and have cattle back in it, I have no guarantee that in three months from that day or six months that if it doesn't work to their satisfaction I'll have to do something else.

We have small villages of 300 to 500 people in our county that have been fighting pollution practices for the last four or five years but they have up to five years more in which construction can take place. But I had 60 days! When I question them on this they say, "You are only one person - they are a whole town."

Pollution in Michigan is the most common word used in the last election. The one who made the most promises got the most votes and won.

We thought we had an understanding and then somebody dug down in the files and back in 1929 there was an act #245 passed which is this little jobeedoo right here (he held it up). In this act they have the right to come on your premises if you are suspected of pollution. They need no search warrant, they can come at their discretion and go through your feedlot or farm. And if you don't think that ain't nice to have 15-20 guys running around in your cattle pens! This happened to me on a Sunday afternoon.

I'm not real bitter about it. It did have an economic impact on me. The bank I did business with for the last five years, and with which I had a line of credit of a little over half a million dollars to run this lot, decided that I was no longer a good risk on account of this water pollution thing. So they refused to do business with me until I get one full year of operation with the new detention basin and if this satisfies the Water Resources Commission then they'll be glad to do business with me.

I went to six or eight other banks with the same results. I finally found one lending institution that would go along with me if I'd put \$75,000 worth of front money on the line in cash, that they can use, and I get no interest for, for one year.

As I say - I have nothing against pollution - we've got it. Man never designed nor built anything that didn't pollute! We're all guilty of it in one way or another - but, I don't know whether I'll be able to be a member of this organization a year from today or not. I'll probably be broke.

This sampling of the runoff water at 150 ppm from the detention basin will be in effect. But the stream has 45 to 50 ppm already in it when it reaches my property. So I asked why can't I add my 150 ppm legal limit and make it 200 ppm? "Oh, no. You can only have 150 ppm samples when it passes your lot."

Above me there are two dairies, a hog farm and two beef cattle operations. They said, "Well, just say the word and we'll make those boys put in a pollution control system." So, these are my neighbors that I have to live with. I don't feel that I should go out and cut their throats.

The farmers who have been growing corn for me are in an economic hole. They planted corn to sell to me. Now they have no market. This is a small part of the impact this will have on a community.

There has to be a better way as far as time limits are concerned in fighting pollution. I read that the federal government was going to pay 80 per cent of the costs of pollution control. That's very true, but only up to \$2,500. That won't buy the diesel fuel to run the cats and crane on our detention basin.

On October 12, 1970, a 2,500-head lot was given 30 days to design and start construction of pollution control retention ponds or move their cattle off the land. Michigan has the power to act!

January 16, 1971

The Committee on Environment and Resources met at 9:30 a.m. with a quorum present and Chairman Lundgren presiding.

Rep. Scott, chairman of the sub-committee on H.B. 85, stated the sub-committee had met with all those who had requested to meet with the sub-committee--people representing the Anaconda Co., oil and gas industry, the Montana Stockgrowers Association along with others. These meetings had been held before any of the amendments proposed by the sub-committee had been worked out.

Rep. Scott discussed each amendment with the committee. The amendments were as follows:

Amend on page 4, line 11, following the word "underground" by adding the following: "this section shall not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters." Rep. McNamar explained that this would take care of irrigation waters carrying fertilizers where none of the irrigation water flows into any state water. He explained that under the present definitions of pollution, the irrigation water carrying fertilizers would be defined as polluted. Rep. Ainsworth said he would have no objection to this proposed amendment.

Amend on page 20, line 29, following the word and punctuation "confidential." by striking the words "Under no circumstance shall" and inserting in lieu thereof the word "The"

Amend on page 5, line 18, after the words "under the" by changing the word "guidance" to the word "supervision"

Amend on page 9, line 8, by striking the word "shall" and inserting in lieu thereof the word "may"

Amend on page 16, line 23, after the word "pollution" by adding the following sentence: "The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown."

Amend on page 20, lines 29 and 30, following the word and punctuation "confidential." by striking the words "Under no circumstance shall" and inserting in lieu thereof the word "The"

Amend on page 21, line 1, following the word "waters" by inserting the words "shall not"

Amend on page 21, section 16, line 2, after the word "confidential" by striking the period "." and inserting the following punctuation and words "; except that the party supplying the information to the board may apply to the board for confidential status for the information so supplied, and the board shall determine that the disclosure of said information is in the public interest prior to the disclosure to the public of said information."

Amend on page 14, line 27, to change the word "may" to "shall"

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Amend on page 15, line 21, add "If such a request is filed, a hearing shall be held within a reasonable time."

Chairman Lundgren again stated that the chairman of the sub-committee had met with all those that had opposed the bill and contacted him.

Rep. Scott moved the adoption of the sub-committee report by adopting the proposed amendments, seconded by Rep. Anderson and the motion carried. (exhibit 1 which becomes a part of the record)

Rep. Ainsworth stated that Monsi Ziegen, representing the livestock industry, has asked that a representative from the livestock growers be included.

Rep. Scott stated the attorney for the Anaconda Co. had wanted an amendment on page 18, line 22 through 25 by striking the sub-section 3 and in conjunction with the change on page 15, line 26, change "all parties" to read "the alleged violators and the board". No action of the committee was taken on this proposed amendment.

Rep. McNamer stated that he did not believe the oil and gas industry would be hurt under the provisions of H.B. 85 unless they were not diligent in policing their own industry and then the state board of health could take care of the situation.

Rep. McGrath proposed an amendment which would put into law the present water standards, but no action was taken on his amendment.

Rep. Scott moved that as amended, H.B. 85 do pass. Rep. McGrath made the substitute motion that his proposed amendment be adopted. Rep.

Johnston asked the purposed of Rep. McGrath's proposed amendment and Rep. McGrath answered that it would maintain the present water standards. Rep. Scott stated he opposed the proposed amendment because it would make a statute of the water standards and it is the duty of the board to designate the standards and to modify the present standards. He said the amendment would lock the present standards in the statutes and therefore he opposed the amendment proposed by Rep. McGrath. Rep. McGrath's motion failed.

Rep. Quillici made a substitute motion that a member of labor be put on the board and stated that labor represented 65% of the working people. He stated the working man is directly involved in this pollution and is working in polluted conditions quite often and felt a representative from labor on the board would be beneficial to the law as they would be in a position to make very useful recommendations.

Rep. Darrow stated two representatives are to be named from industry and wondered if one of them could not be a laborer in industry and one a representative of industry management.

Representative McNamer stated he was sure the makeup of the board would be considered and that both the livestock people and the soil and

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water conservation people wanted representation.

It being time for the House to convene, Chairman Lundgren asked for adjournment and stated they would reconsider H.B. 85 on adjournment on Monday and asked the secretary to type up the amendments so that each member could study them.

The meeting was adjourned at 10:25 a.m.

Respectfully submitted,


Conrad F. Lundgren,
Chairman

hmw

Be amended on page 4, section 2, line 11, after the word and punctuation "underground;" by inserting the words and punctuation "this section shall not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters

be further amended on page 5, section 4, line 18, after the words and underlining "under the" by striking the word and underlining "guidance" and inserting in lieu thereof the word and underlining "supervision"

be further amended on page 9, section 6, line 8, by striking the word "shall" and inserting in lieu thereof the word "may"

be further amended on page 14, section 12, line 27, after the word "it" by striking the word "may" and inserting in lieu thereof the word "shall"

be further amended on page 15, section 13, line 21, after the word and punctuation "section." by inserting the following sentence "If such a request is filed, a hearing shall be held within a reasonable time."

be further amended on page 16, section 13, line 23, after the word and punctuation "pollution." by inserting the following sentence "The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown."

be further amended on page 20, section 16, lines 29 and 30, following the word and punctuation "confidential." by striking the words "Under no circumstance shall" and inserting in lieu thereof the word "The"

be further amended on page 21, section 16, line 1, following the word "waters" by inserting the words "shall not"

and be further amended on page 21, section 16, line 2, after the word "confidential" by striking the period "." and inserting the following punctuation and words"; except that the party supplying the information to the board may apply to the board for confidential status for the information so supplied, and the board shall determine that the disclosure of said information is in the public interest prior to the disclosure to the public of said information. " and by capitalizing the letter "t" in the word "the" following.

January 18, 1971

The Committee on Environment and Resources met at 4:45 p.m. with a quorum present and Chairman Lundgren presiding.

Rep. Johnston moved that H.B. 85 as amended, do pass.

Rep. McNamer made a substitute motion that further amendments be considered and offered the ones following:

amend on page 11, line 14, by deleting the figure and word five (5) and insert in lieu thereof the word and figure seven (7)

amend on page 11, line 20, by deleting the word "agriculture" and inserting a livestock feeder

amend on page 11, line 23, by adding (f) a representative of labor

amend on page 11, line 23, by adding (g) a supervisor of a soil and water conservation district

Rep. Anderson said he would support those amendments and would move that another be added to the list, a representative of an organization concerned with water recreation. Rep. Quilici seconded the motion, considerable discussion followed but no vote taken just then.

Rep. Darrow asked if Rep. McNamer would consider changing the representative of labor to a representative of organized labor. Rep. McNamer stated the Governor making the appointment could interpret it that way if he wished. He said he didn't oppose the change but thought it would be all right the way it is.

Rep. McNamer stated he would like to delete in line 23, "fishing for sport" and add "an organization concerned with water recreation". Rep. Scott made a substitute motion that fishing for sport remain, seconded by Rep. Johnston, but the motion failed. Rep. McNamer then moved that "fishing for sport" be deleted and "an organization concerned with water recreation" be inserted, seconded by Rep. Kolstad and the motion carried.

Rep. Quilici moved that a representative from labor be added, seconded by Rep. Kolstad and the motion passed unanimously.

Rep. McNamer moved that a supervisor of a soil and water conservation district be added, seconded by Rep. Anderson and the motion carried. Rep. Anderson moved that a representative of agriculture be deleted and a livestock feeder be added, seconded by Rep. Ainsworth and the motion carried.

Rep. Scott again moved that a representative from an organization concerned with fishing for sport remain, seconded by Rep. Bradley and the motion carried.

Rep. Scott moved that additional amendments to the bill be made in various places to coincide with the additional members, seconded by Rep. Darrow and the motion carried.

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Rep. Anderson asked if line 20 on page 6 would require everyone installing a septic tank to have a permit no matter where the tank would be installed and after considerable discussion, Rep. Scott said he thought it would be required to have a permit.

Rep. Scott moved that as amended, H.B. 85 do pass, seconded by Rep. Johnston and the motion passed unanimously.

Rep. Quillici moved that Rep. Darrow report on H.B. 66, seconded by Rep. Ainsworth and the motion carried.

Rep. Darrow stated the corrections were technical corrections, renumbering or relettering subsections, correcting typing errors; the words that were underlined on the first page were deleted from the original bill by mistake. He said on page 2 there was a substantial change as there had not been a term for the officials and the proposed amendment would provide a term of office, and that they would meet at least quarterly. He went through the amendments and explained each one. He moved that his proposed amendments be adopted, seconded by Rep. Johnston. Discussion followed. In answer to Rep. Quillici's question as to who made the appointments of the legislators to serve, Rep. Darrow pointed out that line 6, page 6 provided for the appointments to be made by the leadership in each house.

Rep. Bradley stated that she would like to limit representation from each house to two members and in that way she felt there would be better representation from the public. Rep. Darrow said the public is represented by the senators and the representatives and he would oppose her suggestion.

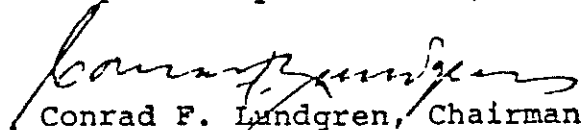
Rep. Scott moved to adjourn. His motion was lost 11 to 2.

Rep. McGrath moved that as amended, H.B. 66 do pass. Rep. Scott made a substitute motion that consideration of H.B. 66 be passed for the day, seconded by Rep. Bradley but the motion failed.

Rep. Scott explained that he would like to have H.B. 33 considered at the same time that H.B. 66 would be considered and explained why. Rep. Darrow said he felt each bill should be considered individually and considered on its own merits. Rep. Darrow seconded the motion that H.B. 66 do pass as amended, and the motion carried.

The meeting was adjourned at 6:00 p.m.

Respectfully submitted,


Conrad F. Lundgren, Chairman

hmrw

HB #85. Representative A. L. Ainsworth of District #26, Missoula, appeared before the committee as chief sponsor. He explained this would transfer administrative authority to the State Board of Health and would increase the advisory council to 12 members. HB #85 was drafted with the cooperation of the Water Resources Board, Fish and Game, and Board of Health. Amendments were made to the original bill and it passed the House unanimously. He stated he had no knowledge of any opposition and asked urgently for the support of this legislation.

Sen. Bollinger stated he had introduced a similar bill as Senate Bill #27, but he thought the House bill the better one and was willing to let SB #27 die. A few minor amendments were discussed but one of the authors explained the wording in the House bill satisfactorily.

All witnesses were excused and the committee discussed the bills before it today.

HB #85. Moved by Bollinger, seconded by Deschamps that HB #85 BE CONCURRED IN. Motion carried.

SB #202. Motion by Hibbard, seconded by Bollinger that SB #202 DO PASS. Motion carried.

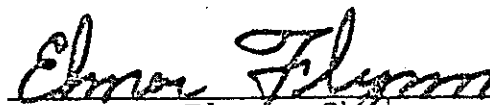
SB #203. Motion by Bollinger, seconded by Hibbard that SB #203 DO PASS AS AMENDED. Motion carried. (Amendments to be submitted by Sen. Sheehy.)

The sub-committee (Mitchell, Bollinger & Deschamps) which had been appointed to further study SB #126 and SB #172, submitted their report. After considerable discussion of the expense which would be involved, the following action was taken.

SB #126. Motion by Deschamps, seconded by Cotton that SB #126 DO PASS AS AMENDED. Motion carried.

SB #172. Motion by Deschamps, seconded by Bollinger that SB #172 DO NOT PASS. Motion carried.

There being no further business, the meeting adjourned.


Flynn, Chairman

Failure to pay.

the state grass conservation commission for the administration of the commission. If any state district fails or refuses to pay such fee or fees on or before the first day of *October* of each year, and after such district shall have been provided with a full report from the commission of all monies collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district."

Writ of mandate.

Approved February 9, 1971.

CHAPTER NO. 21

An Act to Revise the Water Pollution Control Act by Placing Administration of the Act with the Department of Health Under Policy Guidance from the Board of Health; Redefining the Meaning of Pollution; Broadening the Activities Under Which a Permit must be Gained Under Section 69-4806, R.C.M. 1947; Defining the Duties of the Board of Health and Department of Health; Including as a Member of the State Water Pollution Advisory Council, the Commissioner of Agriculture, deleting Representative of Agriculture, Adding a Livestock Feeder, a Representative from Labor, a Supervisor of a Soil and Water Conservation District, a Representative of an Organization Concerned with Water Recreation and a Representative of an Organization Concerned with Fishing for Sport; Changing the Name of the State Water Pollution Control Council to the State Water Pollution Advisory Council and Redefining its Function; Providing for a Director of Water Pollution Control; Enacting a New Hearing and Appeals Procedure; Adopting a New Emergencies Procedure; Amending Sections 69-4801, 69-4802, 69-4804, 69-4805, 69-4806, 69-4810, 69-4811, 69-4812, 69-4813, and 69-4814, R.C.M. 1947, and Repealing Sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818 and 69-4819, R.C.M. 1947.

It is the intent of the Montana Legislative Assembly that all provisions of this act be codified in Title 69, Chapter 48, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-4801, R.C.M. 1947, is amended to read as follows:

Amending clause.

"69-4801. **Public policy of the state.** (1) It is the public policy of this state to:

Public policy declared.

(a) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

Water conservation.

(b) provide a comprehensive program for the prevention, abatement, and control of water pollution.

Program to control pollution.

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream. "*Natural*" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from dams at the effective date of this act are "*natural*".

Condition of wastes.

Natural condition of receiving stream defined.

Section 2. Section 69-4802, R.C.M. 1947, is amended to read as follows:

Amending clause.

"69-4802. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

Definitions.

(1) "*Sewage*" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

"Sewage."

(2) "*Industrial waste*" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

"Industrial waste."

(3) "*Other wastes*" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, *dead animals*, *sediment*, and all other substances that may pollute state waters;

"Other wastes."

(4) "*Contamination*" means impairment of the quality of state waters by sewage, industrial wastes or other wastes creating a hazard to human health;

"Contamination."

- "Pollution." (5) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any state waters, as exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, or to livestock, wild animals, birds, fish or other wildlife, provided, however, that any discharge which is permitted by Montana water quality standards is not "pollution" for the purposes of this chapter.
- Water quality standards.
- "Sewerage system." (6) "Sewerage system" means any device for collecting or conducting sewage, industrial wastes or other wastes to an ultimate disposal point;
- "Treatment works." (7) "Treatment works" means any works installed for treating or holding sewage, industrial wastes or other wastes;
- "Disposal system." (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewerage systems and treatment works;
- "State waters." (9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; this section shall not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters;
- "Person." (10) "Person" means the state, any political subdivision of the state, institution, firm, corporation, partnership, or individual or other entity;
- "Council." (11) "Council" means the state water pollution advisory council created by this act;
- "Board." (12) "Board" means the state board of health;
- "Department." (13) "Department" means the state department of health;
- "Executive officer." (14) "Executive officer" means the chief administrative officer of the state department of health;
- "Director." (15) "Director" means the director of water pollution control, a position created by this act;

(16) "Local department of health" means the staff, including any health officers, employed by a county, city, city-county, or district board of health." "Local department of health."

Section 3. Section 69-4804, R.C.M. 1947, is amended to read as follows: Amending clause.

"69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned. This chapter applies to drainage or seepage from all sources including that from artificial, privately owned ponds or lagoons if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters." Drainage or seepage from all sources.

Section 4. Section 69-4805, R.C.M. 1947, is amended to read as follows: Amending clause.

"69-4805. Administration of chapter. Except as otherwise provided, the department, acting under the supervision of the board as to matters of policy, is responsible for administration of the provisions of this chapter. Administration.

The executive officer shall appoint a director of water pollution control to perform the duties and powers conferred upon the department by this act. The director shall meet requirements established by the board. The director shall have a minimum of five (5) years of responsible experience in water pollution control or aquatic ecology programs. His salary shall be set in accord with other members of the staff with the same degree of responsibility and training. He will be responsible for the administration of the water pollution control act within the limitations of funds and personnel assigned. Appointment of director.

The executive officer shall, in the absence of a director of water pollution control, assign another member of the staff to perform the duties and exercise the powers of a director. Qualifications.

The department may use personnel of the state and local departments of health as necessary to administer the provisions of this act." Salary.

Section 5. Section 69-4806, R.C.M. 1947, is amended to read as follows: Responsibilities.

"69-4806. Pollution unlawful—permits. It is unlawful to: Acting director.

CHAPTER 21

SESSION LAWS

- Pollution unlawful. (1) cause pollution as defined in section 69-4802 (5), *R.C.M. 1947*, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;
- Permit required. (2) carry on any of the following activities without a current permit from the department;
- Disposal system. (a) *construct, modify, or operate a disposal system which discharges to any state waters; or*
- Sewage outlets. (b) *construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes to any state waters; or*
- Violation of limitations. (3) *violate any limitation imposed by a current permit."*
- Duties of board. Section 6. (1) The board shall:
- Classification of waters. (a) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;
- Standards of purity. (b) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;
- Review at least every 3 years. (c) review from time to time, at intervals of not more than three years, established classifications of waters and standards of water purity and classification, provided that
- Prior rules deemed adopted by board. (1) such classifications, standards, and rules as have been adopted by the state water pollution control council under section 133, chapter 197 of the laws of 1967 shall be deemed, without necessity of a hearing, to have been initially adopted by the board.
- (2) in revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 133, chapter 197 of the laws of 1967.
- Board may not lower quality standards. (3) the board shall require that any state waters whose existing quality is better than the established
- High quality shall be maintained.

FORTY-SECOND LEGISLATIVE ASSEMBLY

CHAPTER 21

standards as of the date on which such standards become effective be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of such waters, and

Justifiable change.

(4) the board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increase source of pollution to high quality waters, referred to in (3) immediately above, to provide the degree of waste treatment necessary to maintain that existing high water quality;

Degree of waste treatment required.

(d) advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution;

Cooperation with other agencies and groups.

(e) make rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems,

Rules governing permits.

(f) make rules governing the issuance, denial, modification, or revocation of permits, provided, however, that:

(1) the rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that

Operation shall not result in pollution.

(2) the rules may allow the issuance of a temporary permit under which pollution may result, for a period no longer than three years and subject to no extension, if the department finds that the issuance of such a permit is proper for obtaining compliance with the applicable standards, that

Temporary permits.

(3) the rules shall provide that the department may revoke any permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and that

Revocation.

New sources—
treatment prior to
permit.

(4) any person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2) and (3), R.C.M. 1947, to waters and tributaries of waters classified as A-open-D-1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately said classification, as defined in section 69-4802 (7), R.C.M. 1947, prior to the issuance of a permit by the department;

Hearings.

(g) hold any hearings necessary for the proper administration of this chapter;

Rules for
administration.

(h) make rules for the administration of this chapter; and

Court actions.

(i) bring actions in court for the enforcement of this chapter.

(2) The board may:

Loans and grants.

(a) accept loans and grants from the federal government and from other sources to carry out the provisions of this chapter; and

Minimum
requirements for
waste treatment.

(b) establish minimum requirements for the treatment of wastes.

Section 7. (1) The department shall:

Dealing with
permits.

(a) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters, consistently with rules made by the board;

Plans.

(b) examine and approve or disapprove plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

Limitations in
permits.

(c) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

Information.

(d) collect and furnish information relating to the prevention and control of water pollution; and

Research.

(e) conduct or encourage necessary research and demonstrations concerning water pollution.

(f) issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

Orders to clean up.

(2) The department may:

(a) through its authorized representatives, enter upon any private or public property at reasonable times to investigate conditions relating to pollution of state waters; and

Right of entry.

(b) issue, modify, or revoke orders for the abatement of pollution.

Orders for
abatement.

Section 8. Section 69-4810, R.C.M. 1947, is amended to read as follows:

Amending clause.

"69-4810. State water pollution advisory council—creation—members, appointment and term of office. There is a state water pollution *advisory* council whose members are:

Advisory council
membership.

(1) the executive officer of the state department of health;

(2) the state fish and game director;

(3) the director of the *Montana water resources board*;

(4) *the commissioner of agriculture*;

(5) *eight (8) members* appointed by the governor for terms of four (4) years as follows:

(a) a representative of industry concerned with the disposal of inorganic waste;

(b) a representative of industry concerned with the disposal of organic waste;

(c) *a livestock feeder*;

(d) a representative of municipal government;

(e) *a representative of an organization concerned with fishing for sport*;

(f) *a representative from labor*;

(g) *a supervisor of a soil and water conservation district*;

(h) *a representative of an organization concerned with water recreation."*

Amending clause. Section 9. Section 69-4811, R.C.M. 1947, is amended to read as follows:

Terms of office. "69-4811. **State water pollution advisory council—vacancy in office, filling—compensation of members.** Terms of council members holding office on the effective date of this act shall not be affected. An appointment to an expired term shall be for four (4) years. An appointment to an unexpired term shall be for the remainder of the term. The *eight (8)* appointed members shall receive twenty dollars (\$20) per day plus actual and necessary expenses incurred in performing their duties. Expenses shall be paid by the department from funds appropriated and allocated to water pollution control."

\$20.00 per day plus expenses.
Source of funds.

Amending clause. Section 10. Section 69-4812, R.C.M. 1947, is amended to read as follows:

Chairman. "69-4812. **State water pollution advisory council—officers—meetings—quorum—designating of deputy by member.** (1) The council shall select a chairman from among its members. The executive officer shall designate a member of the staff of the department of health to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

Meetings. (2) It shall hold at least two (2) regular meetings each calendar year. Special meetings shall be held at the call of the chairman or upon written request of two (2) or more members. A majority of the members is a quorum.

Alternates. (3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties."

Amending clause. Section 11. Section 69-4813, R.C.M. 1947, is amended to read as follows:

Council recommendations to board. "69-4813. **Powers and duties of the council.** The council may by majority report, minority report, or report of one or more members of the council, make recommendations to the board concerning any matters relating to the administration of this act."

Amending clause. Section 12. Section 69-4814, R.C.M. 1947, is amended to read as follows:

"69-4814. **Hearings by board—notice.** Before streams are classified or standards established or modified, or rules made, revoked or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards or modification of them and any rules proposed to be made, revoked or modified shall be published at least once a week for three (3) consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than thirty (30) days prior to first publication to comment on the proposed action.

Board shall hold public hearings.

Publication of notice.

Mailing of notice.

Council has 30 days to comment.

At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under section 13 of this act."

Reasonable opportunity to be heard.

Rules for conduct of hearings.

Section 13. (1) Whenever the department has reason to believe that a violation of this chapter or any rule made under it has occurred, it shall cause written notice to be served personally or by mail upon the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of any corrective action which the department proposed to require, and the time within which such action is to be taken. For the purposes of this chapter, service by mail shall be deemed complete on the day of mailing.

Notice of alleged violations.

Service by mail.

(2) In a notice given under part (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. Such hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

Notice to appear.

Hearings.

(3) If the department does not require an alleged violator to appear before the board for a public hearing,

Violator may request hearing.

he may request the board to conduct such a hearing. His request shall be in writing and shall be filed with the executive officer no later than thirty (30) days after service of a notice under subsection (1) of this section. If such a request is filed, a hearing shall be held within a reasonable time.

Hearings shall be public.

(4) If a hearing is held pursuant to the provisions of this section, it shall be public and shall, if the board deems it practicable, be held in any county in which the violation is alleged to have occurred. The board shall permit all parties to respond to the notice served under subsection (1), to present evidence and argument on all issues, and to conduct cross-examination required for full disclosure of the facts. The board shall keep a stenographic record of the hearing and at least one (1) copy of any written exhibits put in evidence.

Stenographic record.

Oaths, examination of witnesses, subpoenas. Witness fees and mileage.

District court may order attendance.

Contempt.

Board may issue orders.

Statement of finding.

Petition for rehearing.

Actions for penalties.

Notice of denial of permit.

(5) A representative of the board may administer oaths, examine witnesses, and issue notices of the hearing including subpoenas requiring the testimony of witnesses and the production of evidence. Witnesses shall receive the same fees and mileage as in civil actions. In case of failure to obey a notice of hearing or subpoena, the district court where the hearing is held has jurisdiction upon request by the board to issue an order requiring a person to appear and testify or produce evidence, and failure to obey shall be punished as contempt of district court.

(6) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. The order shall be accompanied by a statement of the board's findings, reasons, and conclusions upon all material issues of fact, law, or discretion. It shall state the date or dates by which any violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(7) In addition to or instead of issuing an order, the board may initiate appropriate action for recovery of a penalty pursuant to section 17 of this act.

Section 14. (1) If the department denies an application for a permit or modifies a permit, the department

shall give written notice of its action to the applicant or holder, and he may request a hearing before the board, in the manner stated in section 13 of this act, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within thirty (30) days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. Modification of a permit shall be effective thirty (30) days after receipt of notice by the holder, unless the department specifies a later date, if the holder does not request a hearing before the board. If the holder does request a hearing before the board, no order modifying his permit shall be effective until twenty (20) days after he has received notice of the action of the board.

Hearing within 30 days after request.

Board action. Effective dates.

(2) If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately, if the department finds that the violation is likely to continue and will cause pollution the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in section 13 of this act and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately, unless the board directs otherwise.

Immediate suspension or revocation.

Hearing.

Order.

Section 15. (1) Any person who has exhausted all administrative remedies available before the department and board and who is aggrieved by an order of the board may, within twenty (20) days after the date of the order, petition for review by the district court of the county in which the alleged source of pollution is located.

Petition for review by district court.

(2) An action for review shall be initiated by delivering a copy of a written petition for review to the executive officer of the board, and by filing the original of the petition with the clerk of the court in which review is sought. The petition shall specify the order or orders review of which is sought and shall state the grounds of the petition. When the petition is filed with the clerk of

Service on board.

Grounds.

Jurisdiction.	the court, the district court has jurisdiction of the action. As soon as possible in the ordinary course of business and within thirty (30) days after receipt of the petition by
Certified record.	the board, the board shall certify to the district court the entire record and proceedings, including all evidence received in the form of documents and other exhibits and a transcript of such testimony taken by the board as any party shall request.
Intervention.	(3) Any person interested in the order may intervene, in the manner provided by the Rules of Civil Procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.
Counsel for board.	(4) The attorney general shall represent the board if requested, or the board may appoint special counsel for the proceedings, subject to the approval of the attorney general.
No bond for costs required.	(5) Neither the state nor the board need give a bond or make a deposit for costs upon an action for review by a district court or upon any subsequent appeal.
Review based on record.	(6) The review by the district court shall be based solely on the record of the hearing before the board. That record shall include the notice given pursuant to section 13 (1) of this act, any testimony transcribed pursuant to subsection (2) of this section, any exhibits filed with the board, any motions or pleadings which were submitted to the board and any rulings made by the board with respect to them, the order under review, the statement of the board accompanying the order, and any relevant document filed in the proceeding. To the extent necessary in respect to the issues, the court shall determine whether the order of the board was (a) constitutional, (b) within the statutory jurisdiction and powers of the board, (c) issued pursuant to procedure required by law, (d) supported by substantial evidence on the whole record or such portions of the record as may be cited by the parties, and (e) within the reasonable discretion of the board. The court shall then as appropriate, affirm, modify, or reverse the order of the board or remand the case to the board for further proceedings.
Determination by court.	
Remand to board.	
Injunction.	The court may, if appropriate, issue an injunction directing compliance with the order of the board as affirmed or modified.

(7) Any party may appeal from the decision of the district court to the supreme court of Montana in the manner provided for civil cases.	Appeal to supreme court.
(8) The initiation of an action for review or the taking of an appeal shall not stay the effectiveness of any order of the board, unless the court finds that there is probable cause to believe	Action for review shall not stay orders. Exceptions.
1. that refusal to grant a stay will cause serious harm to the affected party, and	
2. that any violation found by the board	
(a) will not continue, or	
(b) if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.	
If the court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.	Court may issue restraining order or injunction.
Section 16. Confidentiality of records. Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, tend to weaken his competitive position shall be confidential unless he expressly agrees to its publication or availability to the general public or unless such information is introduced as evidence in a hearing before the board. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential; except that the party supplying the information to the board may apply to the board for confidential status for the information so supplied, and the board shall determine that the disclosure of said information is in the public interest prior to the disclosure to the public of said information. The board may use any information in compiling or publishing analyses or summaries relating to water pollution,	Public record. Confidential information. In writing. Application for confidential status. Board use of information.

if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section.

Penalties for violation.

Section 17. (1) Any person who violates any provision of this chapter other than section 16 of this act, or any rule or order issued pursuant to it is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1,000). Each day of violation constitutes a separate offense.

Penalties for violation of section 16.

(2) Any person who willfully violates section 16 of this act is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1,000).

Enforcement proceedings in name of state.

(3) Action pursuant to section (1) of this section does not bar enforcement of this chapter or of rules or orders issued pursuant to it by injunction or other appropriate remedy. The board shall institute and maintain any and all such enforcement proceedings in the name of the state.

Purpose to provide remedies for control of water pollution.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate and control the pollution of state waters. This chapter shall not be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision of this chapter or any act done by virtue of it be construed as estopping the state or any municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Deposit of fines.

(5) All fines collected shall be deposited to the credit of the department, to be used to alleviate pollution for which no person subject to action by the department or board is responsible.

Section 18. **Emergencies.** Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of

the act, the department shall order such person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise. Notice of the order shall conform to the requirements of section 13 (1) of this act so far as practicable; the notice shall indicate that the order is an emergency order. Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than five (5) days thereafter, unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in section 13, subsections (4), (5), and (6) of this act. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in section 13 (6) of this act. An action for review of the order of the board may be initiated in the manner specified in section 15 of this act. The initiation of such an action or taking of an appeal shall not stay the effectiveness of the order, unless the court shall find that the board did not have reasonable cause to issue an order under this section.

Section 19. **Injunctions.** The board may bring an action for an injunction against the continuation of any alleged violation which has been the basis of suspension or revocation of a permit by the department or against any person who fails to comply with an emergency order issued by the department by virtue of section 18 of this act or any final order of the board. The court to which the board applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the board are true, and it may issue a temporary restraining order pending action on the temporary injunction.

Section 20. **Action by other parties.** Any person, association, corporation or agency of the state or federal government may apply to the board protesting any violation of this chapter. The board shall thereupon direct the department to investigate the alleged violation. The department shall make the investigation and make a written

Emergency control.

Notice.

Hearing.

Board orders.

Statement of findings.
Review.

Order not stayed.

Action for injunction.

Temporary injunction.

Other parties may protest to board.

Investigation.
Written report.

report to the board and to the person, association, corporation or agency which made the protest.

Government agencies shall cooperate with board.

Section 21. Cooperation with the council, board, and department. The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local department of health, shall cooperate with the council, board and department, in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

Repealing clause.

Section 22. Sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818, and 69-4819, R.C.M. 1947, are repealed.

Severability clause.

Section 23. It is the intent of the legislative assembly that, if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 10, 1971.

CHAPTER NO. 22

An Act Amending Sections 81-412, 81-419, 81-426, 81-428, 81-502, 81-606, 81-613, 81-615, 81-915, 81-1113, 81-1702.1 and 81-1703, R.C.M. 1947, to Eliminate Fees Established by Statute and to Provide General Authority for the Commissioner of Lands and Investments to Establish Those Fees With the Approval of the Board of Land Commissioners and Providing for an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. In order to insure that fees which are credited to the general fund and which are charged and collected under Title 81, R.C.M. 1947, reflect the current cost of state government, those fees established by statute are deleted and the commissioner of lands and investments is authorized to establish those fees with the approval of the board of land commissioners.

Statutory fees deleted. Commissioner authorized to establish fees.

Section 2. Section 81-412, R.C.M. 1947, is amended to read as follows: Amending clause.

"81-412. Rental, when due—cancellation for nonpayment. The rental for the first year of the lease and such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for issuing the lease shall be paid at or before the time of the execution of the lease; provided, however, that in the case of all leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease; provided, further, when the government of the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of said lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the government of the United States is the lessee, shall become due and payable to the commissioner of state lands and investments on December 15 next preceding the rental year to which the rental applies and if not paid on or before February 1 next following, this nonpayment shall have the effect of cancelling the lease from and after February 28 of that year. The commissioner shall notify the lessee by letter addressed to the post-office address given in the lease of such cancellation, and the land shall then be open for lease to other applicants."

Payment of rental and fees.

Exceptions where federal government is lessee.

Effect of nonpayment.

Notice to lessee.

Section 3. Section 81-419, R.C.M. 1947, is amended to read as follows: Amending clause.

"81-419. Assignment of leases — preferences — fee. Leases to state lands may be assigned on blanks provided for that purpose by the state board of land commissioners, but no such assignment shall be binding on the state unless the assignment is filed with the commissioner, approved by him and payment made of such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners. Preference shall always be given to the applicant who wants the land for his own individual use so that the full advantage coming from the leasing and use of such lands may reach those who actually till the soil, and so that they shall not be compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms

Leases to state lands may be assigned.

Approval.

Payment of fees.

Preferences. Individual use.